

Cat.

RAPID TRANSIT ACT OF 1891

WITH

Amendments and Index.

Laws 1891, Chapter 4; as amended by Laws 1892, Chapter 102; and by Laws 1892, Chapter 556; and by Laws 1894, Chapter 528; and by Laws 1894, Chapter 752; and by Laws 1895, Chapter 519.

PRINTED FOR THE

*Board of Rapid Transit Railroad Commissioners of
the City of New York.*

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NOTE.—The term “board”, unless otherwise specified, will be understood throughout to mean “board of rapid transit railroad commissioners.”

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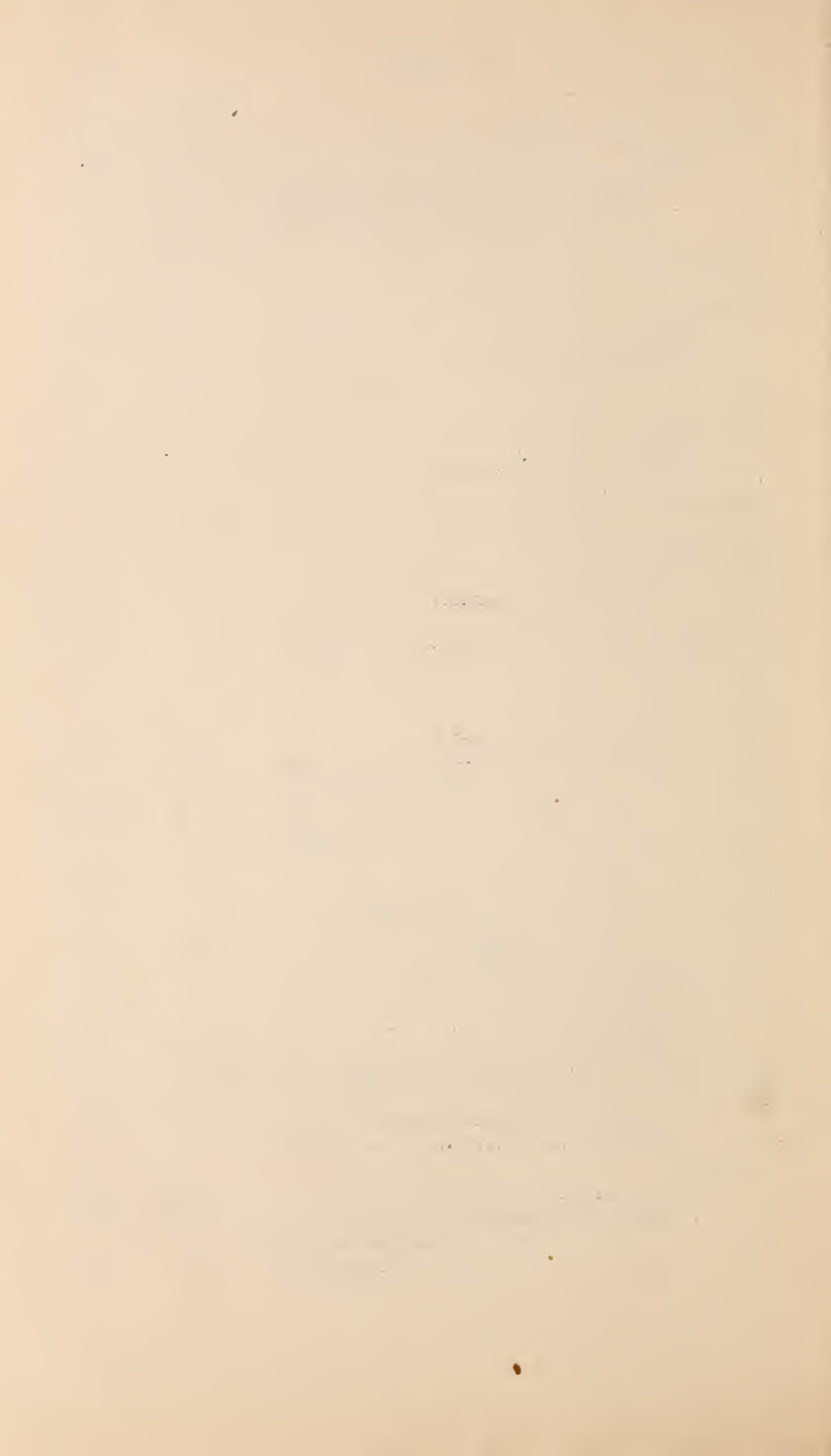
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RAPID TRANSIT ACT OF 1891.

With Amendments.

Laws 1891, Chapter 4 ; as amended by Laws 1892, chapter 102 ; and by Laws 1892, chapter 556 ; and by Laws 1894, chapter 528 ; and by Laws 1894, chapter 752, and by Laws 1895, ch. 519.

LAWS 1891, CHAP. 4.

ACT to provide for rapid transit railways in cities of over one million inhabitants.

Approved by the Governor, January 31, 1891. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

§ 1. In each city having over one million of inhabitants, according to the last preceding national or state census, there shall be a board of rapid transit railroad commissioners in and for such city, which shall consist of the mayor of such city, the comptroller or other chief financial officer of such city, the president of the chamber of commerce of the State of New York, by virtue of his office, and the followed named persons,

to wit: William Steinway, Seth Low, John Claflin, Alexander E. Orr and John H. Starin. The members of said board shall be styled commissioners of rapid transit. Vacancies which may take place in the offices so held by the persons specifically named herein as such commissioners shall be filled by a majority vote of the remaining members of said board. The board thus constituted shall have and exercise the specific authority and powers hereinafter conferred and also such other and necessary powers as may be requisite to the efficient performance of the duties imposed upon said board by this act. (*Laws 1891, chap. 4, §1 ; as amended by L. 1894, chap. 752, § 1.*)

§ 2. Each of the said commissioners other than the mayor and comptroller or other chief financial officer of such city shall take and subscribe an oath faithfully to perform the duties of his office, which oath shall be filed in the office of the clerk of any county within which there shall be a city of the class mentioned in the first section of this act. (*Laws 1891, ch. 4, § 2, as am'd by L. 1894, ch. 752, § 2.*)

§ 3. Within twenty days after the filing of the oaths of said commissioners so required to make and file the same the commissioners of rapid transit in respect to each of such cities shall meet and organize as a board. The board when so organized, may frame and adopt by-laws not inconsistent with this act, and establish suitable rules and regulations for the proper exercise of the powers and duties hereby conferred and imposed, and may, from time to time, amend the same. Four members of the board shall constitute a quorum for the transaction of business, but a less number may adjourn meetings. The said board shall adopt a seal, and keep a record of its proceedings, which shall be a public record and be open to inspection at all reasonable times. (*Laws 1891, ch. 4, § 3, as am'd by L. 1894, ch. 752, § 3.*)

§ 4. The said board upon its own motion may proceed, from time to time, to consider and determine whether it is for the interest of the public and of the city in which it is appointed, that a rapid transit railway or railways for the conveyance and transportation of persons and property should be established therein, and upon the request in writing of the

local authorities of any such city at any time, the said board shall proceed forthwith to consider and determine the same questions, and in each case the said board shall conduct such an inquest and investigation as may be deemed necessary in the premises. If, after such consideration and inquest, the said board shall determine that a rapid transit railway or railways, in addition to any already existing, are necessary for the interest of the public, and such city, it shall proceed to determine and establish the route or routes thereof and the general plan of construction. Such general plan shall show the general mode of operation and contain such details as to manner of construction as may be necessary to show the extent to which any street, avenue or other public place is to be encroached upon and the property abutting thereon affected, and the concurrent votes of at least *six members of the board shall be necessary for the purpose of determining and establishing such route or routes and plan of construction. The said board, from time to time, may locate the route or routes of such railway or railways over, under, upon, through and across any streets, avenues and lands within such city, including blocks between streets or avenues or, partly over, under, upon, through and across any streets, avenues and lands within such city and partly through blocks between streets or avenues; provided that the consent of the owners of one-half in value of the property bounded on and the consent also of the local authorities having control of that portion of a street or highway, upon which it is proposed to construct or operate such railway or railways be first obtained, or in case the consent of such property owners can not be obtained, that the determination of three commissioners appointed by the general term of the supreme court in the district of the proposed construction, given after due hearing of all parties interested, and confirmed

* It is enacted by section 10 of chapter 752 of the Laws of 1894, that " whenever it is expressly provided in the act hereby amended that any act of the board of rapid transit railroad commissioners shall be done by the concurrent vote of four of the members of said board, the act hereby amended is further amended so as to provide in such cases that such vote shall be that of six of such members." This amendment operates upon the fourth, eleventh, fourteenth and twentieth sections of the Rapid Transit Act of 1891 (chap. 4).

by the court, that such railway or railways ought to be constructed or operated, be taken in lieu of the consent of such property owners; except that no public park nor any lands or places, lawfully set apart for, or occupied by, any public building of any city or county, or of the state of New York, or of the United States, nor those portions of Grand, Classon, Franklin avenues and Downing street in the city of Brooklyn, lying between the southerly line of Lexington avenue and northerly line of Atlantic avenue, nor that portion of Classon avenue in said city lying between the northerly line of Lexington avenue and southerly line of Park avenue, nor that portion of Washington avenue in said city lying between Park and Atlantic avenues, nor DeBevoise place, Irving place and Leffert's place, Lee avenue, Nostrand avenue, Waverly avenue, Vanderbilt avenue and Clinton avenue in said city of Brooklyn, nor that portion of the city of Buffalo lying between Michigan and Main streets, nor any part of Fifth avenue in the city of New York, nor that portion of any street or avenue which is now actually occupied by any elevated railroad structure, shall be occupied by any corporation to be organized under the provisions of this act for the purpose of constructing a railway in or upon any of such public parks, lands or places, or upon or along either of the said excepted streets or avenues. It shall be lawful for said commissioners to locate the route of a railway or railways, by tunnel under any such public parks, lands or places, and to locate the route of any railway to be built, under this act, across any of the streets and avenues now occupied by an elevated railroad structure in the city of New York, or across any of the streets or avenues excepted in this act at any point at which, in its discretion, the board of rapid transit railroad commissioners may deem necessary in the location of any route or routes, or under, or under and along, any of said streets or avenues now so occupied or so excepted in this act. Nothing in this act shall authorize the construction of an elevated railway on Broadway south of Thirty-third street, nor on Madison avenue in the city of New York. It shall not be lawful to grant, use or occupy, for the purposes of an elevated railroad, except for the purpose of crossing the same, any portion of

the following named streets and places in the city of New York, that is to say: Second avenue below Twenty-third street; Fourteenth street, between the easterly line or side of Seventh avenue, and the westerly side of Fourth avenue; nor Eleventh street, west of Seventh avenue, nor any part of Bank street; Nassau street; Printing House square, so called, south of Franklin street; Park row, south of Tryon row; Broad street and Wall street.* (*Laws* 1891, *ch.* 4, § 4, *as am'd by L.* 1894, *ch.* 528, § 1, *and by L.* 1894, *ch.* 752, § 10, *and by L.* 1895, *ch.* 519, § 1.).

§ 5. After any determination by said board of any such route or routes and of any general plan of construction of said railway or railways, the said board shall transmit to the common council of said city a copy of said plans and conclusions as adopted. It shall be the duty of such common council upon receiving such copy of plans and conclusions to appoint a day not less than one week nor more than ten days after the receipt thereof for the consideration of such plans and conclusions, and the said common council shall, on the day so fixed, proceed with the consideration thereof and may continue and adjourn such consideration, from time to time, until a final vote shall be taken thereon, as hereinafter provided. Within four weeks after the copy of such plans and conclusions adopted by the board of rapid transit railroad commissioners shall have first been received by said common council, a final vote shall be taken thereon, by ayes and nays, in the form of a vote upon a resolution to approve such plans and conclusions, and to consent to the construction of a railway or railways in accordance therewith. Upon the adoption of such a resolution by a majority vote of all the members of the common council and the approval of the mayor, and in the case of the refusal or failure of the mayor to approve such resolution, then by a two-thirds vote of all the members of the common council, the said plans and conclusions shall be deemed to have been finally consented to and adopted, and such consent shall be deemed

* Other streets in the city of New York are exempted by the following statutes :

1. *Laws* 1892, *ch.* 367.

2. *Laws* 1888, *ch.* 256, *as am'd by L.* 1894, *ch.* 518.

to be the consent of the local authorities of such city ; provided, that where in any such city the exclusive control of any street, road, highway or avenue which is to be used or occupied by any railway or railways constructed under the provisions of this act, is by law vested in any local authority other than the common council of such city, the approval of the aforesaid plans and conclusions and the consent to the construction of a railway thereunder shall be given by such local authority in place of and if required in addition to such approval and consent by said common council and with like effect. Upon obtaining the approval and consent of the local authorities as above provided, the said board of rapid transit railroad commissioners shall also, unless such approval and consent of local authorities shall have been refused, take the necessary steps to obtain, if possible, the said consents of the property owners along the line of the said route or routes. For the purposes of this act the value of the property bounded on that portion of any street or highway in, upon, over or under which it is proposed to construct or operate such railway or railways, or any part thereof, shall be ascertained and determined from the assessment-roll of the city in which the said property is situated, confirmed or completed last before the local authorities shall have given their consent as above provided. If such consents of property owners can not be obtained, the said board may, in its own name, make application to the general term of the supreme court in the judicial district in which such railway is to be constructed for the appointment of three commissioners to determine and report after due hearing whether such railway ought to be constructed and operated. Two weeks' notice of such application shall be given by daily publication thereof, Sundays and holidays excepted, in six daily newspapers published in the city where such proposed railway is to be constructed, if there be so many newspapers published in said city, and if not, then in all the daily newspapers published in said city. The newspapers in which said publication shall be made shall be designated by the general term of the supreme court to which such application is to be made on the application of the commission-

ers without notice. The said general term, upon due proof of the publication aforesaid, shall appoint three disinterested persons who shall act as commissioners, and such commissioners within ten days after their appointment shall cause public notice to be given in the manner directed by the said general term, of their first sitting, and may adjourn from time to time until all their business is completed. Vacancies in such commission may be filled by said general term after such notice to persons interested as the general term may deem proper, and the evidence taken before as well as after such vacancy occurred shall be deemed to be properly before such commissioners. The said commissioners shall determine after public hearing of all parties interested whether such railroad ought to be constructed and operated and shall report the evidence taken to said general term, together with a report of their determination whether such road ought to be constructed and operated, which report, if in favor of the construction and operation of such road, shall, when confirmed by said court, be taken in lieu of the consent of the property owners above mentioned. Such report shall be made within sixty days after the appointment of said commissioners, unless the said court, or a judge thereof, shall extend such time. (*Laws 1891, ch. 4, § 5, as am'd by L. 1895, ch. 519, § 2.*)

§ 6. When the consents of the local authorities and the property owners, or, in lieu thereof, the authorization of the said general term of the supreme court upon the report of commissioners, shall have been obtained, the board of rapid transit railroad commissioners shall at once proceed to prepare detailed plans and specifications for the construction of such rapid transit railway or railways in accordance with the general plan of construction, including all devices and appurtenances deemed by it necessary to secure the greatest efficiency, public convenience and safety, including the number, location and description of stations and plans and specifications for suitable supports, turnouts, switches, sidings, connections, landing places, buildings, platforms, stairways, elevators, telegraph and signal devices, and other suitable appliances incidental and requisite to what the said board may approve as the

best and most efficient system of rapid transit in view of the public needs and requirements, and the said board may in its discretion include in said plans, provisions for subways or tunnels for sewer, gas or water pipes, electric wires and other conductors proper to be placed under ground, whenever necessary so to do, in order to permit of the proper construction of any railway herein provided for in accordance with the plans and specifications of the said board. Stations and station approaches may be under or over streets of the route or cross-streets. The board may from time to time, alter such detailed plans and specifications, but always so that the same shall accord with the general plan of construction; but whenever a contract shall have been made for the construction of any railway herein provided for, no such alteration shall be made by the board without the consent of the contractor and his sureties, except as liberty shall have been reserved in such contract by said board for such alteration. Whenever the construction of any railway, depressed way, subway or tunnel under the provisions of this act shall interfere with, disturb or endanger any sewer, water pipe, gas pipe, or other duly authorized sub-surface structure, the work of construction at such points shall be conducted in the city of New York in accordance with the reasonable requirements of the commissioner of public works, and in other cities in accordance with the reasonable requirements and under the supervision of the officer or local authority having the care of, and the jurisdiction or control over, such sub-surface structures so interfered with, disturbed or endangered. All expenses incidental to such supervision and to the work of reconstructing, readjusting and supporting any such sewer, water pipe, gas pipe, or other duly authorized sub-surface structure, shall be borne and paid by the company which shall have acquired the right, privilege and franchise to construct, maintain and operate such railway, pursuant to a sale of the same at public auction, as hereinafter provided, if any such sale shall be made by said board. (*Laws* 1891, *ch.* 4, § 6, *as am'd by L.* 1894, *ch.* 752, § 4, *and by L.* 1895, *ch.* 519, § 3.)

§ 7. If, after having secured the necessary consents and after

having prepared such detailed plans and specifications as are by this act provided for, it shall not have been determined by vote of the people as provided by sections twelve and thirteen of chapter seven hundred and fifty-two of the laws of eighteen hundred and ninety-four that such railway or railways shall be constructed for and at the expense of such city as hereafter provided, said board shall sell at public auction in the city where said railway or railways are to be built and for the account and benefit of said city the right, privilege and franchise to construct, maintain and operate such railway or railways. Notice of the time and place of such sale shall be published three times a week for at least six successive weeks in at least three daily newspapers published in said city. The board may prescribe all such terms and conditions of sale as it may deem to be for the interest of the public and of the city in which the railway or railways are to be constructed. The advertisement of sale shall contain only so much of the said terms, plans and specifications for the construction as the said board may think proper, but such advertisement must state at what place the full terms, plans and specifications may be examined, and they shall be subject to examination under such reasonable rules and regulations as the board may prescribe. The terms of sale shall provide for the construction of the railway or railways under the supervision of the board, and for the approval of an engineer or engineers to be appointed, from time to time, by the board, and the corporation or corporations to be organized for the purpose of constructing and operating such railway or railways as in this act provided shall pay such engineer or engineers such salary as may, from time to time, be fixed by the said board of rapid transit railroad commissioners. Such engineer or engineers shall hold their office at the pleasure of the said board. The terms of sale shall require the successful bidder to deposit with the comptroller or chief fiscal officer of the city, in cash or approved securities, such amount as the board may deem sufficient to constitute a guarantee of full compliance with the terms of sale by the purchaser and by the corporation to be formed for

the purpose of building and operating said railway as hereinafter provided. Said bids and all rights which may have been acquired thereunder shall become null and void and of no effect, at the option of said board, should there be a failure to organize a corporation to exercise such rights, privileges and franchises as required by said terms of sale and this act, or for any violation of any of the requirements of said terms of sale which should be complied with before such corporation is organized, and thereupon any deposit which may have been made pursuant to such terms of sale shall be paid into the treasury of such city upon a certificate being made and filed by said board with the public officer with whom such deposit shall have been made, that said bid, and all rights which may have been acquired thereunder, have become null and void and of no effect ; and said rights, privileges and franchises shall be again sold by said board, subject to all the provisions of this act regulating such sales. The terms of sale shall require the construction of the road to be begun within a time to be specified in said terms of sale, and to be finished within a certain time thereafter, to be specified therein, and may prescribe the time within which portions of the same shall be begun and finished. The said terms of sale may reserve to the board the power to extend the times for the commencement and completion of the construction of said railway, or of portions of the same, if, in its discretion, the said board deem such extension to be for the best interests of the city. In case the corporation formed for the purpose of constructing said railway shall fail to begin or finish the construction within the times for those purposes respectively limited, all rights, privileges and franchises of such corporations to maintain and operate said railway shall be forfeited, and upon such forfeiture being adjudged by the court in a suit brought for that purpose in the name of the mayor, aldermen and commonalty of the city of New York, or such other appropriate corporate title of said city or by said board of rapid transit railroad commissioners, then the said board shall have power to advertise and resell said rights, privileges and franchises and so much of the road as shall have been constructed by such corporation ; such

suits shall have preference over all other cases in all courts ; and the proceeds of such resale shall be applied first to the payment of the expenses of the resale, and then to the discharge of any liens which may have been created upon such property, and the balance shall be paid over to the said corporation. The terms of sale must provide for the organization by the purchaser or purchasers of such rights, privileges and franchises of a corporation to exercise the same, and to construct, maintain and operate such rapid transit railway or railways, with the powers and subject to the duties and liabilities granted or imposed by this act. The said terms of sale must also specify the amount of the capital of any such corporation, and number of shares of capital stock which such corporation shall be authorized to issue, the percentage to be paid in cash by the subscribers on subscribing for such shares, the maximum amount of the bonded indebtedness which such corporation be authorized to incur, and which may be secured by mortgage upon its property and franchises, and the rates of fares and freights which such corporation may charge and collect for the carriage of persons and property. But the rate of fare for any passenger on said railway from any point on the same northward or southward within the city of New York shall not exceed five cents under any provision of this act. The said board may, if it considers that the public interest requires it to do so, reject all bids and readvertise the said rights, privileges and franchises for sale, with the same or different terms of sale, as often as it may deem necessary in the interest of such city, and shall finally accept that bid which, under all circumstances, in its opinion, is most advantageous to the public and such city ; and no bid shall be accepted without the concurrent vote of six members of the board. The terms of sale on any such resale must contain all the provisions required by this act to be inserted in the original terms of sale. Such sale may be adjourned from time to time at the discretion of the board. All sales of such rights, privileges and franchises shall be made for a definite term of years, but the expiration of the term, if sold for a term of years, shall not impair any mortgage or other

lien upon the property of such corporation or the rights of any creditor or creditors of such corporation; provided, however, that nothing herein contained shall be so construed as to extend the term for which such rights, privileges and franchises are sold. (*Laws 1891, ch. 4, § 7, as am'd by L. 1894, ch. 752, § 5, and by L. 1895, ch. 519, § 4.*)

§ 8. Within one year, and not less than six months, prior to the expiration of any term for which such rights, privileges and franchises shall have been sold, said board shall proceed to resell the right to maintain and operate the said railway. Such sale shall be made in the manner prescribed for the original sale, and the board is empowered to make suitable provisions for securing to the corporation then operating such railway or railways suitable compensation for the railroad structure and appurtenances, and for any other property, real or personal, which the said corporation may own or of which it may be vested at the expiration of the term for which such rights, privileges and franchises were sold. Any corporation theretofore organized under the provisions of this act may be a purchaser on such resale; but if no such corporation be the purchaser, a new corporation shall be formed to maintain and operate said road in the manner prescribed for the organization of a corporation on the original sale, except that the plans and specifications according to which said railway has been constructed need not be set out at large, but may be referred to as forming part of the articles of association of said new corporation. (*Laws 1891, ch. 4, § 8.*)

§ 9. The said board may rent such offices and employ such engineers, attorneys and other persons, from time to time, as it may, in its discretion, deem necessary to the proper performance by it of its duties as in this act prescribed. It may sue in the name and behalf of the city for which it acts as a board. It may in the name of and in behalf of the said city bring action of specific performance or may apply by mandamus to compel the performance within its city by any corporation or person of any duty or obligation with reference to or arising out of the construction or operation of any railroad under, or by reason of, any grant made or right acquired under this act

or the acts amendatory hereof or supplementary hereto, or out of or by reason of any contract made or authorized by any board of rapid transit commissioners within its city, or it may in behalf of and in the name of said city bring actions to recover damages for any violation of contract or duty, or for any wrong committed by any such corporation or person by reason of any non-performance or violation of duty under the provisions of this act, or under any contract or stipulation made in pursuance of any provisions of this act. Every action or proceeding brought by the said board, and every action or proceeding in which an injunction is had or sought against the board or the said city, or against any corporation or person who or which shall have entered into a contract under the provisions of this act, or any act supplementary hereto, or amendatory hereof, by reason of any act or thing done, proposed or threatened under or by virtue of any provision of this act, or any act supplementary hereto, or amendatory hereof, or is sought against any corporation or person claiming or claiming to act under any grant or franchise under this act, or any act supplementary hereto, or amendatory hereof, and every action or proceeding in which the constitutionality of any part of this act, or of any act supplementary hereto, or amendatory hereof, shall or may be brought in question, shall have a preference above all causes not criminal on the calendar of every court, and may be brought on for trial or argument upon notice of eight days for any day of any term on which the court shall be in session. (*Laws 1891, ch. 4, § 9, as am'd by L. 1894, ch. 752, § 6, and by L. 1895, ch. 519, § 5.*)

§ 10. The board of estimate and apportionment or other board or public body on which is imposed the duty, and in which is vested the power, of making appropriations of public moneys for the purposes of the city government in any city in which it is proposed to construct such railway or railways shall, from time to time, on requisition duly made by the board of rapid transit railroad commissioners, appropriate such sum or sums of money as may be requisite and necessary to properly enable it to do and perform, or cause to be done and performed, the duties herein prescribed, and to provide for the compensa-

tions of such commissioners, and such appropriation shall be made forthwith upon presentation of a requisition from the board of rapid transit railroad commissioners, which shall state the purposes for which such moneys are required by the said board. In case the said board of estimate and apportionment or such other board or public body fail to appropriate such amount as the board of rapid transit railroad commissioners deem requisite and necessary, the said board of rapid transit railroad commissioners may apply to the general term of the supreme court, in the department in which the railway is to be or has been constructed, on notice to the board of estimate and apportionment, or such other board or public body aforesaid, to determine what amount shall be appropriated for the purposes required by this section, and the decision of said general term shall be final and conclusive; and no city shall be liable for any indebtedness incurred by the said board of rapid transit railroad commissioners in excess of such appropriation or appropriations. It shall be the duty of the auditor and comptroller of any such city, after such appropriations shall have been duly made, to audit and pay the proper expenditures and compensation of said commissioners upon vouchers therefor, to be furnished by the said commissioners, which payments shall be made in like manner as payments are now made by the auditor, comptroller, or other public officers, of claims against and demands upon such city; and for the purpose of providing funds with which to pay the said sums, the comptroller or other chief financial officer of said city is hereby authorized and directed to issue and sell revenue bonds of such city in anticipation of receipt of taxes, and out of the proceeds of such bonds to make the payments in this section required to be made. The amount necessary to pay the principal and interest of such bonds shall be included in the estimates of moneys necessary to be raised by taxation to carry on the business of said city, and shall be made a part of the tax levy for the year next following the year in which such appropriations are made. All expenses of the said board of rapid transit railroad commissioners, including the compensation of said commissioners, so incurred and paid by any city as in this

section provided, and for which any city shall be liable, shall be repaid, with interest, by the bidder or bidders at the public sale of the rights, privileges and franchises, as in this act provided, in case said board shall so sell the same, whose bid shall be accepted by the board of rapid transit railroad commissioners, and the terms of such sale shall specify the time when such payment shall be made, as well as the amount thereof. The commissioners, other than the mayor and comptroller or other chief financial officer of such city, shall be paid a reasonable compensation for the duties performed by them, from time to time, under the provisions of this act. The amount of such compensation shall be determined by the general term of the supreme court in the department in which said city shall be located upon application by said board after notice to the mayor of such city. (*Laws 1891, ch. 4, § 10, as am'd by L. 1894, ch. 752, § 7.*)

§ 11. A corporation or corporations to construct and operate such rapid transit railway or railways, and to enjoy and exercise the rights, privileges and franchises in this act provided for shall be created and organized in the manner following: Articles of association shall be duly signed and acknowledged by not less than twenty-five persons, and such articles shall set forth the name of the proposed corporation and duration thereof. Said articles must also state that they are made and filed under and in pursuance of this act for the purpose of taking and exercising the rights, privileges and franchises so purchased as aforesaid, according to the terms of sale; and such terms of sale and all plans and specifications must be made a part of said articles, annexed thereto and filed therewith. The said articles must also contain such other provisions as the said board may deem requisite and necessary, not inconsistent with the terms of sale or with this act. The said articles must be approved by said board, by the concurrent vote of six members, and its approval must be endorsed thereon and attested by the seal of the board and the signature of its presiding officer, and must then be filed in the office of the secretary of state, and a duly certified copy, or a duplicate thereof, must be filed in the office of the clerk of the county in which such railway or railways are to

be constructed. Immediately after the articles of association shall have been so made, approved and filed, the board of rapid transit railroad commissioners shall cause books of subscription to the capital stock of any such corporation to be opened, and shall give public notice of the opening of such books and of the time and place at which subscriptions will be received; and when the full amount of such capital stock shall have been subscribed by not less than fifty persons, and such percentage of the amount subscribed as may have been fixed by the board in the terms of sale shall have been paid in, in cash, to such bank or trust company as the board may select, the said board shall call a meeting of the subscribers for the purpose of organizing the corporation, serving upon or mailing to each subscriber a notice of such meeting at least ten days before the time appointed for holding the same; and the person or persons whose bid shall have been accepted by the said board of rapid transit railroad commissioners shall, if they elect to become subscribers to the capital stock of such corporation, be entitled to a preference for themselves and their associates in subscribing for, and in the allotment of the shares of capital stock of such corporation. (*Laws 1891, ch. 4, § 11, as am'd by L. 1894, ch. 752, § 10.*)

§ 12. At such meeting of subscribers thirteen directors of the corporation shall be elected, each of whom shall be a holder in his own right of at least one hundred shares of the capital stock of the corporation, and the board of rapid transit railroad commissioners shall appoint the inspectors of the first election. Each share of stock shall entitle the holder to one vote for each director. The directors so selected shall hold office for one year and until others are elected in their places. At such meeting by-laws must be adopted not inconsistent with this act, which by-laws shall, among other things, provide for:

1. The term of office of the directors elected at any subsequent meeting of stockholders, which term shall not exceed one year.

2. The manner of filling any vacancy which may occur in any office or in the board of directors.

3. The time and place of the annual meeting of stockholders.

4. The manner of calling and holding special meetings of stockholders.

5. The number of stockholders who shall attend either in person or by proxy, at any stockholders' meeting in order to constitute a quorum.

6. The officers of the corporation, the manner of their election by the directors, and their duties and powers, and among which officers there shall be included a president, a secretary and a treasurer.

7. The manner of electing or appointing inspectors of election.

8. The manner of amending the by-laws.

The by-laws may also provide for the forfeiture of shares for the non-payment of calls and for such other matters as may be deemed proper by the board of rapid transit railroad commissioners and they must be approved by a resolution of said board. (*Laws 1891, ch. 4, § 12.*)

§ 13. Within ten days after the said subscribers' meeting a record of the proceedings thereof, containing a copy of the subscription list, a copy of the by-laws adopted, and the names of the directors chosen, shall be prepared and duly certified by the person presiding over, and person acting as secretary of said meeting. There shall be attached thereto a certificate of the board of rapid transit railroad commissioners, attested by its seal and the signature of its presiding officer, that said board has approved the by-laws adopted at the subscribers' meeting, and that said corporation has been organized in accordance with the provisions of this act. The said record and certificate shall be filed by said board in the office of the secretary of state, and a duly certified copy or duplicate thereof shall be filed in the office of the clerk of the county in which said railway or railways are to be built, and thereupon and upon the payment to the state treasurer of a tax of one-eighth of one per centum of the par value of the capital stock of said corporation, such corporation shall be deemed to be fully organized. A copy of said certificate, duly certified by the secretary of state, or by the county clerk in whose office it is filed, shall be presumptive evidence of the due organization of such corporation in all courts

and proceedings. Upon the production of the certified copy of said certificate, and upon the order of such corporation, the bank or trust company in which the percentage of subscriptions to the capital stock shall have been deposited, shall pay over to any such corporation the amount of such deposit, and said corporation shall repay to the purchaser or purchasers at the sale provided for in section seven of this act, the expenses paid by him or them to the city pursuant to the provisions of the terms of sale, with interest to the date of such re-payment. (*Laws 1891, ch. 4, § 13.*)

§ 14. The said board of rapid transit railroad commissioners, if, in their judgment, the public interest requires, may, at any time after the full organization of any such corporation, by the concurrent vote of six members, authorize such corporation to alter or add to the detailed plans and specifications contained in its articles of association, provided the plans and specifications as so modified do not change the route or routes of said railway and be not inconsistent with the general plan of construction adopted under the provisions of section four of this act, and provided also such modifications be first approved by a vote of two-thirds of the directors of said corporation present and voting at any special meeting duly called for the purpose, by written notice stating the nature of the business to be transacted at said meeting. When such authorization by the board of rapid transit railroad commissioners shall have been given, a certificate shall be prepared, and acknowledged by the president and a majority of the directors of said corporation, stating the nature of the modification, and that the same has been approved by the board of directors in the manner above set forth, to which certificate there shall be attached a copy of so much of the original plans and specifications as are to be affected by the modification, and also the plans and specifications as modified. There shall also be contained in such certificate a declaration of the approval of said board of rapid transit railroad commissioners, attested in the same manner as the certificate of full organization. The said certificate, plans and specifications shall then be filed in the office of the secretary of state, and a certified copy or duplicate

thereof shall be filed in the office of the clerk in which the articles of association are filed. And thereupon said corporation shall be authorized to construct its railway or railways and appurtenances in accordance with such modified plans and specifications. (*Laws 1891, ch. 4, § 14, as am'd by L. 1894, ch. 752, § 10.*)

§ 15. Every corporation organized under this act shall have its principal office and be taxed on its property in the city where its railway or railways are situated. But no taxes of any kind or nature shall be levied or imposed upon that portion of any railway constructed under this act which is in process of construction, and not in actual operation for the transportation of passengers or freight, but this exemption from taxation during construction shall not apply to any portion or portions of said railway after the date on which said portion or portions shall have been opened to the public for the transportation of passengers or freight. (*Laws 1891, ch. 4, § 15, as am'd by L. 1892, ch. 556, § 3.*)

§ 16. The affairs of said corporation shall be managed by a board of thirteen directors, who shall be chosen annually, by a majority of the votes of the stockholders voting at such election, in such manner as may be prescribed in the by-laws of the corporation, and they may and shall continue to be directors until others are elected in their places. In the election of directors, each stockholder shall be entitled to one vote for each share of stock held by him. Vacancies in the board of directors shall be filled in such manner as shall be prescribed by the by-laws of the corporation. No person shall be a director unless he shall be a stockholder owning one hundred shares of stock absolutely in his own right, and qualified to vote for directors at the election at which he shall be chosen. At every election of directors the books and papers of such corporation shall be exhibited to the meeting, provided a majority of the stockholders present shall require it. (*Laws 1891, ch. 4 § 16.*)

§ 17. The directors shall require the subscribers to the capital stock of the company to pay the amount by them respectively subscribed in money at such times and in such instalments as they may deem proper, not inconsistent with the by-laws and the articles of association. (*Laws 1891, ch. 4 § 17.*)

§ 18. Each stockholder of any corporation formed under this act shall be individually liable to the creditors of such corporation, to an amount equal to the amount unpaid on the stock held by him, for all the debts and liabilities of such corporation, until the whole amount of the capital stock so held by him shall have been paid to the corporation; and all the stockholders of any such corporation shall be jointly and severally liable for the debts due or owing to any of its laborers and servants, other than contractors, for personal services, for thirty days' service performed for such corporation, but shall not be liable to an action therefor before an execution or executions shall be returned unsatisfied in whole or in part against the corporation, and the amount due on such execution or executions shall be the amount recoverable, with costs, against such stockholders; before such laborer or servant shall charge such stockholder for such thirty days' service, he shall give him notice in writing within twenty days after the performance of such service, that he intends so to hold him liable, and he shall commence such action therefor within thirty days after the return of such execution unsatisfied, as above mentioned; and every such stockholder against whom any such recovery by such laborer or servant shall have been had, shall have a right to recover the same of the other stockholders in said corporation, in ratable proportion to the amount of the stock they shall respectively hold. (*Laws 1891, ch. 4 § 18.*)

§ 19. The stock of every corporation formed under this act shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of the company, but no share shall be transferable until all previous calls thereon shall have been fully paid in. (*Laws 1891, ch. 4 § 19.*)

§ 20. Any corporation formed under this act may increase or reduce its capital stock from time to time upon obtaining the approval of the board of rapid transit railroad commissioners by a concurrent vote of six members thereof. Such increase or reduction must be approved by a vote in person, or by proxy, of two-thirds in amount of all the stockholders of the corporation, at a meeting of such stockholders called by the directors of the corporation for that purpose, by a notice in

writing to each stockholder, to be served on him in the manner provided for service of the notice of the subscribers' meetings provided for in section eleven of this act. Such notice shall state the time and place of the meeting, and its object, and the amount to which it is proposed to increase or reduce the capital stock. A statement of the increase or reduction shall be signed by the president and a majority of the directors and shall be filed in the office of the secretary of state and of the clerk of the county in which the original articles of association are filed. There must be attached thereto a certificate of the approval of said board of rapid transit railroad commissioners attested in the same manner as the certificate of full organization. (*Laws 1891, ch. 4 § 20, as am'd by L. 1894, ch. 752 § 10.*)

§ 21. No person holding stock in any such corporation, as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as a stockholder of such corporation; but the person pledging such stock shall be considered as holding the same; and shall be liable as a stockholder accordingly; and the estate and funds in the hands of such executor, administrator, guardian or trustee shall be liable in like manner, and to the same extent, as the testator of intestate or the ward or person interested in such trust fund would have been if he had been living and competent to act, and held the same stock in his own name. (*Laws 1891, ch. 4 § 21.*)

§ 22. As often as any contractor for the construction of any part of a railway, which is in progress of construction under the provisions of this act, shall be indebted to any laborer for thirty or any less number of days' labor performed in constructing said road, such laborer may give notice of such indebtedness to said corporation in the manner herein provided; and said corporation shall thereupon become liable to pay such laborer the amount so due him for such labor, and an action may be maintained against said corporation therefor. Such notice shall be given by said laborer to said corporation within twenty days after the performance of the number of days' labor for which the claim is made. Such notice shall be in writing, and shall state the amount and

number of days' labor, and the time when the same was performed and the name of the contractor from whom due, and shall be signed by such laborer or his attorney, and shall be served on an engineer, agent or superintendent employed by such corporation having charge of the section of the road on which such labor was performed personally, or by leaving the same at the office or usual place of business of such engineer, agent or superintendent with some person of suitable age. But no action shall be maintained against any corporation under the provisions of this section, unless the same be commenced within thirty days after notice is given to such company by such laborer as above provided. (*Laws 1891, ch. 4 § 22.*)

§ 23. Every such corporation shall have the right to acquire and hold such real estate or easement or other interest therein, or rights appertaining thereto, as may be necessary to enable it to construct, maintain and operate the said railway or railways, and such as may be necessary for stations, depots, engine-house, car-houses, machine-shops, and other appurtenances specified in the articles of association; and in case any such corporation can not agree with the owner or owners of such property it shall have the right to acquire title to the same in pursuance of the terms of and in the manner prescribed in title one of chapter twenty-three of the Code of Civil Procedure, known as the condemnation law. (*Laws 1891, ch. 4, § 23.*)

§ 24. Every corporation formed under this act shall have power:

1. To take and hold such voluntary grants of real estate and other property as shall be made to it, to aid in the construction, maintenance and accommodation of its railway or railways, but the real estate received by voluntary grant shall be held and used for the purposes of such grant only.

2. To purchase, lease, hold and use all such real estate and other property as may be necessary for the construction and maintenance of its railway or railways, and the stations or other accommodations necessary to accomplish the objects of its incorporation; but nothing herein contained shall be held as

repealing or in any way affecting the act, entitled "An act authorizing the construction of railroads upon Indian lands," passed May twelve, eighteen hundred and thirty-six.

3. To cross, intersect, join and unite its railway or railways with any other railway at any point on its route and upon the grounds of such other railway company, with the necessary turnouts, sidings and switches and other conveniences in furtherance of the objects of its connections. And every corporation whose railway is or shall be hereafter intersected by any new railway, shall unite with the owners of such new railway in forming such intersections and connections, and grant the facilities aforesaid ; and if the two corporations can not agree upon the amount of compensation to be made therefor, the same shall be ascertained and determined by commissioners to be appointed by the court, in the manner provided in this act in respect to acquiring title to real estate. And if the two corporations can not agree upon the points and manner of such crossings and connections, the board of rapid transit railroad commissioners shall determine the same on the application of either corporation.

4. To take and convey persons and property on its railway or railways by the power or force of steam, or by any motor other than animal power, and to receive compensation therefor not inconsistent with the provisions of this act, and the terms of sale under which the said corporation shall have acquired its rights, privileges and franchises.

5. To enter upon and underneath the several streets, avenues, public places and land designated by the said board of rapid transit railroad commissioners, and enter into and upon the soil of the same ; to construct, maintain, operate and use, in accordance with the plan adopted by said board, a railway or railways upon the route or routes and to the points decided upon, and to secure the necessary foundations and erect the columns, piers and other structures which may be required to secure safety and stability in the construction and maintenance of the railways constructed upon the plan adopted by the said board, and which may be necessary for operating the same ; except that nothing in this act shall authorize the construction

of a railway crossing the track of any steam railway in actual operation at the grade thereof, and it shall be lawful to make such excavations and openings along the route through which such railway or railways shall be constructed as shall be necessary from time to time; in all cases the surface of said streets around such foundations, piers and columns shall be restored to the condition in which they were before such excavations were made, as near as may be, and under the direction of the proper local authorities; and in all cases the use of the streets, avenues, places and lands designated by the said board, and the right of way through the same, for the purpose of a railway or railways, as herein authorized and provided, shall be considered, and is hereby declared, to be a public use, consistent with the uses for which the roads, streets, avenues and public places are publicly held; but no such corporation shall have the right to acquire the use or occupancy of public parks or squares in such county, or the use or occupancy of any of the streets or avenues, except such as may have been designated for the route or routes of such railway, and except such temporary privileges as the proper authorities may grant to such corporations to facilitate such construction.

6. From time to time to borrow such sums of money as may be necessary for completing and finishing or operating their railroad, and to issue and dispose of their bonds for such purposes; but the amount of such bonds outstanding at any one time shall not exceed the amount limited by the articles of association. (*Laws 1891, ch. 4, § 24, as am'd by L. 1892, ch. 556, § 4.*)

§ 25. Every conductor, baggage master, engineer, brakeman or other servant of any railroad corporation employed in a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge, which shall indicate his office, and the initial letter of the style of the corporation by which he is employed. No conductor or collector, without such badge, shall be entitled to demand or receive from any passenger any fare or ticket, or to exercise any of the powers of his office; and no officer or servant without such badge shall have authority to meddle or interfere with any passenger, his baggage or property. (*Laws 1891, ch. 4, § 25.*)

§ 26. Any corporation or person operating a railroad under any provision of this act or of any act supplementary hereto or amendatory hereof shall, when applied to by the postmaster-general, convey the mails of the United States on their road or roads respectively; and in case the parties cannot agree as to the rate of transportation therefor, and as to the time, rate of speed, manner and conditions of carrying the same, it shall be lawful for the governor of this state to appoint three commissioners, who, or a majority of them, after fifteen days' notice in writing of the time and place of meeting to the corporation, shall determine and fix the prices, terms and conditions aforesaid; but such price shall not be less for carrying said mails in the regular passenger trains than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains, and a fair compensation for the post-office car. And in case the postmaster-general shall require the mail to be carried at other hours, or at a higher speed than the passenger trains are run, the corporation shall furnish an extra train for the mail and be allowed an extra compensation for the expenses and wear and tear thereof, and for the service to be fixed as aforesaid. (*Laws 1891, ch. 4, § 26, as am'd by L. 1895, ch. 519, § 6.*)

§ 27. If any passenger shall refuse to pay his fare, it shall be lawful for the conductor of the train and the servants of the corporation to put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place, on stopping the train. (*Laws 1891, ch. 4, § 27.*)

§ 28. Every such corporation shall start and run its cars for the transportation of passengers and property at regular times, to be fixed by public notice; and shall furnish sufficient accommodations for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, be offered for transportation at the place of starting and the junction of other railroads, and at usual stopping places established for receiving and discharging way passengers and freight for that train; and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of the freight or fare legally authorized there-

for; and shall be liable to the party aggrieved in an action for damages, for any neglect or refusal in the premises. (*Laws* 1891, *ch.* 4, § 28.)

§ 29. If any person shall, while in charge of a locomotive engine running upon the railway of any such corporation, or while acting as the conductor of a car or train of cars on any such railroad, be intoxicated, he shall be deemed guilty of a misdemeanor. (*Laws* 1891, *ch.* 4, § 29.)

§ 30. If any person or persons shall wilfully do, or cause to be done, any act or acts whatever, whereby any building, construction or work of or on any part of any railroad either constructed or operated under any provision of this act or of any act supplementary hereto or amendatory hereof, or under any provision of any contract made under this act or any act supplementary hereto or amendatory hereof, or any engine, machine or structure, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured or destroyed, the person or persons so offending shall be guilty of a misdemeanor, and shall forfeit and pay to the owner of such building, construction, works, engine, machine, structure, matter or thing treble the amount of damages sustained in consequence of such offence. (*Laws* 1891, *ch.* 4, § 30, *as am'd by L.* 1895, *ch.* 519, § 7.)

§ 31. The legislature may, at any time, annul or dissolve any corporation formed under this act; but such dissolution shall not take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which shall have been previously incurred. (*Laws* 1891, *ch.* 4, § 31.)

§ 32. The said board of rapid transit railroad commissioners may also from time to time, upon application of any railway corporation owning or actually operating a railroad wholly or in part within the limits of the city in which the said board has power to act, if in the judgment of said board the public interests so demand, by the concurrent vote of six of the members of said board fix and determine the route or routes by which any such railway company may connect with other steam railways, or the stations thereof, or with steam ferries,

or may extend its lines within said city, and may authorize any such railway company to lay an additional track or tracks on, above, under or contiguous to a portion or the whole of the route or routes of its railway or railways within said city and to acquire terminal or other facilities necessary for the accommodation of the traveling public on any street or place except the place now known as Battery park on which said railway shall be located; and may also authorize any such railway company to lay its tracks and operate its railway to any terminal or terminals within the said city, and to transport over the same passengers or freight or both, and to run over the same either passenger trains or freight trains or mixed trains; and the said board shall fix and determine the locations and plans of construction of the railways upon such route or routes and of such tracks and facilities, the times within which they shall be respectively constructed, the compensation to be made therefor to the city by said railway company, and such other terms, conditions and requirements as to the said board may appear just and proper,—provided, however, that every such determination, authorization and license shall be made upon the condition that such corporation shall, from the time of the commencement of the operation of any such railway or track or tracks under such determination, authorization or license, annually pay to the said city a sum or rental, and that the amount of such sum or rental for a period of not more than thirty-five years, beginning with such operation of any such railway track or tracks, shall be prescribed by the said board in such determination, authorization or license, and that every such determination, authorization and license shall provide for the readjustment of the amount of such sum or rental at the expiration of the period for which the same shall be so prescribed and for readjustment from time to time in the future of the amount of such annual payment at intervals each of not more than thirty-five years. A certificate shall be prepared by the said board, attested by its seal and the signature of its presiding officer, setting forth in detail the action taken by the said board with respect to such connecting or extended route or routes and such tracks and facilities, and the terms, conditions and require-

ment aforesaid, including provisions as to the said annual payments and the future readjustments thereof. A like certificate shall be prepared in like manner upon every modification of the terms of the contract as hereinafter provided. Each such certificate shall prescribe the terms and conditions of the readjustments of such annual payments and may provide for the determination of such amount upon such readjustments by arbitration or by the Supreme Court. Such certificate shall be delivered to said railway corporation upon the receipt by said board of a written acceptance of said terms, conditions and requirements, duly executed by said railway corporation, so as to entitle it to be recorded. The said certificate shall be filed in the office of the secretary of state, and a duly certified copy thereof shall be filed in the office of the clerk of the county in which the said city is situated, and thereupon, and upon fulfilment by such railway corporation, so far as it relates to such connections, additional track or tracks, or facilities, of such of the requirements and conditions as are necessary to be fulfilled in such cases, under section eighteen of article three of the constitution of this state, and upon fulfilment by such railway corporation of such other terms, conditions and requirements enumerated in said certificate, as the said board may require to be fulfilled as a condition precedent to commencing said work, said railway company shall in such cases possess in addition to existing franchises all the powers conferred by this act upon corporations specially formed thereunder, with respect to its railways authorized to be constructed as aforesaid, and when any route or routes, additional track or tracks, or terminal or other facilities, shall be so fixed and determined, and a certificate as aforesaid shall have been duly filed, such railway company may construct the same with all the rights, and with like effect as though the same had been a part of the original route of its railway then in actual operation. The certificate or certificates prepared by the board of rapid transit railroad commissioners as aforesaid when delivered to and accepted by such railway corporation, shall be deemed to constitute a contract between the said city and said railway company according to the terms of the said certificate: and such contract shall be

enforceable by the said board acting in the name of and in behalf of the said city or by the said company according to the terms thereof, but subject to the provisions of this act. The terms of such contract may from time to time, with the consent of such company, be modified by the board of rapid transit railroad commissioners by the vote of six of its members. But the construction and operation of such connections, extensions, additional track or tracks, or facilities, are hereby authorized only upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of that portion of a street or highway upon, above or under which it is proposed to construct or operate the same, be first obtained, or in case the consent of such property owners cannot be obtained, the general term of the supreme court in the district in which they are proposed to be constructed, may, upon application, in the same manner and on the same notice specified in section five of this act, appoint three commissioners, who shall determine after a hearing of all parties interested, whether the same ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owner. (*Laws 1891, ch. 4, § 32, as am'd by L. 1895, ch. 519, § 8.*)

§ 33. Wherever or whenever the route selected by the said board of rapid transit railroad commissioners for the construction of such railway shall intersect, cross or coincide with any railway track or tracks occupying the surface of any street or avenues, or the construction or operation of said railway shall interfere with any pipes, sewers, subways, or underground conduits or ways, any corporation organized under this act, or any contractor or person constructing any railway or part of a railway under any contract made with the board of rapid transit railroad commissioners, is hereby authorized, for the purpose of constructing the said work, to remove the track or tracks of any such surface railway or railways, or any such pipes, sewers, subways, or underground conduits or ways, but the same shall be done in such manner as to interfere as little as possible with the practical operation or workings of such surface railway or

railways, or the works or business of the owners of any such pipes, sewers, subways, or underground conduits or ways, and upon the construction of such railway built under and in conformity with the provisions of this act, where such removals or changes have been made, said track or tracks, pipes, sewers, subways or underground conduits or ways shall be restored, as nearly as may be, to the condition in which they were previous to the construction of any such railway built under the provisions of this act, and any damages which such company or companies or owners may sustain, shall be ascertained by a commission to be appointed the same as in the case where lands are taken for the purpose of a railway route or routes as hereinbefore provided in this act. For the purpose of the construction or operation of any railway under the provisions of this act, the board of rapid transit railroad commissioners may remove or cause to be removed, any pipes, sewers, subways or underground conduits or ways underneath any street, highway, park, or public place, provided, however, that the same shall be replaced as soon as practicable, either in the same position as before or in a secure and convenient position underneath such street, highway, or public place. All such removals and restorations shall be made at the proper cost and charge of such corporation, contractor, or person as may have made such removals, but subject to the provisions of its, his, or their contract, if any, with the board of rapid transit railroad commissioners. Nothing contained in this act shall authorize any corporation formed thereunder to use the tracks of any horse railway. For the purpose of facilitating construction, and to diminish the period of occupancy of any street for the transportation of material, any contractor acting under a contract made in pursuance of this act, or of any act supplementary hereto or amendatory hereof, may with the approval of the board of rapid transit railroad commissioners lay upon or over the surface of any street, temporary tramways to be used only for the removal of excavated materials or the transportation of material for use in the construction. Provided, however, that any such tramway shall be forthwith removed upon the direction of the board of rapid transit railroad commissioners; and

provided further, that this provision shall not be construed to authorize the construction or operation of any street railroad, or to grant to any corporation, association or individual the right to lay down railroad tracks. (*Laws 1891, ch. 4, § 33, as am'd by L. 1895, ch. 519, § 9.*)

§ 34. In case the people shall determine by vote, as provided in sections twelve and thirteen of chapter seven hundred and fifty-two of the laws of eighteen hundred and ninety-four, that any such railway or railways shall be constructed for and at the expense of such city, then and in that event it shall be the duty of said board to consider the routes, plans and specifications, if any, previously laid out and adopted by them or their predecessors, and for which the consents have been obtained referred to in section five of this act; and either to proceed with the construction of such railway or railways, and provide for the operation of the same, as hereinafter provided, or to change and modify the said routes, plans or specifications in such particulars as to said board may seem to be desirable, or to adopt other or different routes, plans and specifications for such railway or railways, provided, always that in all cases in which any such change or modification shall be of such a character as to require the consents thereto referred to in section five of this act, and in all cases where other or different routes or general plans may have been so adopted the said board shall proceed to secure the consents required to be obtained by section five of this act as therein set forth. As soon as such consents, where necessary, shall have been obtained, and the detailed plans and specifications have been prepared as provided in section six of this act, the said board, for and in behalf of said city, shall enter into a contract with any person, firm or corporation, which in the opinion of said board shall be best qualified to fulfil and carry out said contract, for the construction of such road or roads, upon the routes and in accordance with the plans and specifications so adopted, for such sum or sums of money, to be raised and paid out of the treasury of said city, as hereinafter provided, and on such terms and conditions, not inconsistent

with the aforesaid plans and specifications, as said board shall determine to be best for the public interests. And said board may contract for the construction of the whole road, or all the roads provided for by the aforesaid plans in a single contract, or may by separate contracts, executed from time to time, provide for the construction of parts of said road or roads, or for the construction at first of two or more tracks over a part or parts of such road or roads, and afterwards of one or more additional tracks over a part or parts of such road or roads, as the necessities of said city and the increase of its population may in the judgment of said board require. The board may also in a contract for a part of such a road insert a provision that at a future time upon the requirement of the board the contractor shall construct the remainder or any part of the remainder of said road, as the growth of population or the interests of the city may in the judgment of the board require, and may in such contract insert a provision of a method for fixing and ascertaining at such future time the amount to be paid to the contractor for such additional construction, and to the end of such ascertainment may provide for arbitration or for determination by a court of the amount of such compensation, or of any other details of construction which shall not be prescribed in the contract, but which shall be deemed necessary or convenient by said board. Any such contract may provide, if the public interest shall, in the opinion of the board, justify the provision, that the construction of any section or portion of the road may, with the consent of the board, be suspended during the term of operation of the railroad as hereinafter mentioned, or any part of such term, provided, that during such term or part of term the contractor shall use in lieu of such portion of the road a railroad owned or leased by the contractor or a portion or section thereof, which shall, with the railroad or portion of railroad constructed by it under its contract with the board, form a continuous and convenient route. Such contract shall also provide that the person, firm or corporation so contracting to construct said road or roads shall, at his or its own cost and expense, equip, maintain and operate said road or roads for a term of years to be specified in said contract, not less than

thirty-five, nor more than fifty years, and upon such terms and conditions as to the rates of fare to be charged and the character of service to be furnished and otherwise as said board shall deem to be best suited to the public interests, and subject to such public supervision and to such conditions, regulations and requirements as may be determined upon by said board, provided, that in case the contract shall provide for construction at different times or at intervals of time of different parts of a road, or if the contract shall provide for the use by the contractor of an existing railroad as part of a continuous route as aforesaid, then and in any such case the board of rapid transit railroad commissioners may in its discretion prescribe periods for the operation of the different parts of said road so that at one period of time in the future the board may be enabled to make a single operating contract or lease of the entire road. Such contract shall further provide by proper stipulations and covenants on the part of the said city, that the said city shall secure and assure to the contractor, so long as the contractor shall perform the stipulations of the contract, the right to construct and to operate the road as prescribed in the contract, free of all right, claim, or other interference, whether by injunction, suit for damages, or otherwise, on the part of any owner, abutting owner, or other person. Such contract shall further provide that the person, firm or corporation so contracting to construct, maintain and operate said road shall annually pay into the treasury of said city, as rental for the use of said road, a sum which shall not, except as hereinafter provided, be less than the annual interest upon the bonds to be issued by said city for the construction of said road as hereinafter provided for, and in addition to said interest, a further sum which shall be equal to a percentage of not less than one per centum upon the whole amount of said bonds,—provided, that in estimating such annual interest and additional percentage there shall be deducted from the amount of said bonds the amount thereof issued to pay for rights, terms, easements, privileges or property other than lands acquired in fee. Such rental and the term for the operation of said road shall begin as to said road or any section thereof when the same

shall be declared by the board of rapid transit railroad commissioners to be completed and ready for operation. For the purpose of estimating such one per centum per annum upon the ascertainment of the amount of such rental, there shall be included such portion of the said bonds as shall have been issued to pay interest on bonds theretofore issued under the provisions of this act, except bonds issued to pay for rights, terms, easements, privileges, or property other than lands acquired in fee. The aforesaid annual rental shall be paid at such times during each year as said board shall require, and shall be applied first to the payment of the interest on said bonds, as the same shall accrue and fall due, and the remainder of said rental not required for the payment of said interest shall be paid into the sinking fund, for the payment of the city debt, if there shall be such sinking fund in said city, or, if there be none such, then said balance of said rental shall be securely invested, and with the annual accretions of interest thereon, shall constitute a sinking fund for the payment and redemption at maturity of the bonds issued, as hereinafter provided. Said contract may also provide for a renewal or renewals of the lease of said road upon the expiration of the original term and of any renewals of the same upon such terms and conditions as to said board may seem just and proper, and may also contain provisions for the valuation of the whole or a part of the property of said contracting person, firm or corporation, employed in and about the equipment, maintenance and operation of said road, and for the purchase of the same by the city, at such valuation, or a percentage of the same, should said lease not be so renewed at any time. Said contract may provide for the construction of said road in sections, and except as herein otherwise provided, shall specify when the construction of said road, or sections of the same shall be commenced, and, in each case, the date of completion. It shall also state the date on which the operation of the road, or of any section thereof, shall commence. The person, firm or corporation so contracting for the construction, equipment, maintenance and operation of said road, shall give a bond to said city,

in such amount as said board of rapid transit railroad commissioners shall require, and with sureties to be approved by said board, who shall justify in the aggregate in double the amount of said bond. Said bond shall be a continuing security, and shall provide for the prompt payment by said contracting person, firm or corporation, of the amount of annual rental specified in the aforesaid contract, and also for the faithful performance by said contracting person, firm or corporation, of all the conditions, covenants and requirements specified and provided for in said contract. The said contracting person, firm or corporation shall also simultaneously with the execution and delivery of said contract, deposit with the comptroller or other chief financial officer of such city the sum of one million dollars in cash or in securities of a value not less than one million dollars, which securities shall be of the character of those in which the savings banks of this state are authorized by law to invest moneys, and shall be approved by the board of rapid transit railroad commissioners, which cash or securities shall, under such terms and conditions as shall be provided in the said contract, be further security for the faithful performance by such contracting person, firm or corporation of all the covenants, conditions and requirements specified and provided for in said contract relating to the construction and equipment of said road, and the city in and for which said road shall be constructed shall also have a first lien upon the rolling stock and other property of said contracting person, firm or corporation, constituting the equipment of said road and used or intended for use in the maintenance and operation of the same, as further security for the faithful performance by such contracting person, firm or corporation of the covenant, conditions and agreements of said contract on his, their, or its part to be fulfilled and performed, and in case of the breach of any such covenant, condition and agreement said lien shall be subject to foreclosure by action, at the suit of such city, in the same manner, as far as may be, as is then provided by law in the case of foreclosure by action of mortgages on real estate. The said board of rapid transit railroad commissioners may, however, from time to time, by a concurrent vote of six of the

members of said board, relieve from such lien, any of the property to which the same may attach, upon receiving additional security which may be deemed by said board so voting to be the equivalent of that which it is proposed to release and otherwise upon such terms as to such board so voting shall seem just. Upon the completion of the construction and equipment of said road to the satisfaction of said board, and when the operation of the same shall have commenced pursuant to said contract, it shall be the duty of the comptroller or other chief financial officer to pay to the said contracting person, firm or corporation said sum of one million dollars in cash or the said securities so to be deposited as above provided, and said contracting person, firm or corporation shall also be then entitled to be credited upon the rental which he, they or it shall have contracted to pay to said city for the use of said road a sum which shall be equal, as the case may be, either to the interest on the sum of one million dollars for the time of such deposit at the rate of interest provided for in the bonds which shall have been issued and sold by the city to provide for the construction of said road or to the interest, dividends, or other income which said city shall have received from the said securities. The said contract shall further provide that in case of default in paying the annual sum or rental therein provided for, or in case of the failure or neglect on the part of said contracting person, firm or corporation, faithfully to observe, keep and fulfill the conditions, obligations and requirements of said contract, the said city, by its board of rapid transit railroad commissioners, may take possession of said road and the equipment thereof, and as the agent of said contracting person, firm or corporation, either maintain and operate said road, or enter into a contract with some other person, firm or corporation for the maintenance and operation thereof, retaining out of the proceeds of such operation, after the payment of the necessary expenses of operation and maintenance the annual rental hereinbefore referred to, and paying over the balance, if any, to the person, firm or corporation with whom the first contract above mentioned was made, and if such proceeds of the operation of said road, after the payment of the

necessary expenses of maintenance and operation, including the keeping in repairs of the rolling stock and other equipment, shall in any year be less than the annual rental hereinbefore referred to and provided in the first contract, then and in that case, the said contracting person, firm or corporation and his or its bondsmen, shall be and continue jointly and severally liable to the aforesaid city for the amount of such deficiency until the end of the full term for which the said first contract was originally made. No contract entered into under authority of this act shall be assigned without the written consent of the said board of rapid transit railroad commissioners concurred in by all the members of said board. It shall be deemed to be part of every such contract that, in case the board of rapid transit railroad commissioners shall cease to exist, the legislature may provide what public officer or officers of the city shall exercise the powers and duties belonging to the board of rapid transit railroad commissioners under or by virtue of any such contract, and that in default of such provision, such powers and duties shall be deemed to be vested in the mayor of the city. Every such contract shall provide that if the contracting person, firm or corporation shall fail to construct or to operate the railway according to the terms of the contract, and shall, after due notice of its default, omit for more than a reasonable time to comply with the provisions of such contract, the board of rapid transit railroad commissioners may bring an action in the name and in behalf of the city to forfeit and vacate all the rights of such contracting person, firm or corporation under such contract, and for damages and otherwise as may be necessary for the sufficient and just protection of the rights of the city; or may, upon such terms as to the board of rapid transit railroad commissioners seem just and with such person or corporation as to the said board may seem proper, make another operating contract and lease of the said road for the residue of the term of the contractor in default; and may bring action in the name and on behalf of the city to recover from the contractor the amount due from the contractor, less the amount which shall have been received by the city under or by virtue of such new contract, and for all other dam-

ages sustained by the city by reason of such default. Any railway corporation, organized under the laws of this State, or any existing railway corporation owning or actually operating a railway wholly or in part within the limits of the city, in and for which said board has power to act, shall be competent and is hereby authorized to enter into a contract for the the contruction and operation of any railway pursuant to the provisions of this chapter. (*New section, Laws 1894, ch. 752, § 9, as am'd by L. 1895, ch. 519, § 10.*)

§ 35. The person, firm or corporation operating such road, shall be exempt from taxation in respect to his, their or its interest therein under said contract and in respect to the rolling stock and other equipment of said road, but this exemption shall not extend to any real property which may be owned and employed by said person, firm or corporation in connection with the construction or operation of said road. (*New section, Laws 1894, ch. 752, § 9.*)

§ 36. The said board of rapid transit railroad commissioners before awarding any contract or contracts shall advertise for proposals for such contracts by a notice to be printed twice a week for three successive weeks in no less than four of the daily newspapers published in said city, and in such newspapers published elsewhere than in said city as said board shall determine. Such notice shall set forth and state the points within said city, between which said road or roads is or are to run, the general method of construction, the route or routes to be followed, the term of years for which it is proposed to make such contract, and such other details and specifications as said board shall deem to be proper. Said notice shall state the time and place at which said proposals will be opened, and the said board shall attend at the time and place so specified, and shall publicly open all proposals that shall have been received, but the said board shall not be bound to accept any proposals so received, but may reject all such proposals and readvertise for proposals in the manner hereinbefore provided, or may accept any of such proposals as will, in the judgment of such board, best promote the public interest, and award a contract accordingly. (*New section, Laws 1894, ch. 752, § 9, as am'd by L. 1895, ch. 519, § 11.*)

§ 37. For the purpose of providing the necessary means for such construction, at the public expense, of any such road or roads and the necessary means to pay for lands, property, rights, terms, privileges and easements, whether of owners, abutting owners, or others, which shall be acquired by the city for the purposes of the construction or the operation of such road or roads as hereinafter provided, and of meeting the interest on the bonds in this section hereinafter provided for accruing thereon prior to the completion and readiness for operation of the portion of such road or roads for the construction of which such bonds shall have been respectively issued, the board of estimate and apportionment, or other local authority in said city, in which such road or roads are to be constructed, having power to make appropriations of moneys to be raised by taxation therein, from time to time, and as the same shall be necessary, and upon the requisition of said board of rapid transit railroad commissioners, shall direct the comptroller, or other chief financial officer of said city, and it shall thereupon become his duty, to issue the bonds of said city at such a rate of interest, not exceeding three and one-half per centum per annum, as said board of estimate and apportionment, or other local authority directing the issue of such bonds, may prescribe. Said bonds shall provide for the payment of the principal and interest in gold coin of the United States of America. They shall not be sold for less than the par value thereof, and the proceeds of the same shall be paid out and expended for the purposes for which the same are issued, upon vouchers certified by said board of rapid transit railroad commissioners. Said bonds shall be free from all taxation for city and county purposes, and shall be payable at maturity out of the sinking fund for the payment of the city debt, if there be such a sinking fund of said city; but if there be no such sinking fund, then out of a sinking fund to be established and created out of the annual rentals of said road as hereinbefore provided. But this provision that the said bonds shall be payable out of such sinking fund shall not diminish or affect the obligation of said city as a debtor upon said bonds, or any other right or remedy of any holder or owner of any such bonds, to collect

the principal or interest thereof. The amount of bonds authorized to be issued and sold by this section shall not exceed fifty millions of dollars, par value, without the consent of the legislature first had and obtained, provided, however, that such amount shall be increased by a sum not exceeding five millions of dollars, if the board of rapid transit railroad commissioners shall certify that such increase is made necessary by payments required for any lands, property, rights, terms, easements or privileges which shall be acquired by the said city as hereinafter provided. (*New section, Laws 1894, ch. 752, § 9, as am'd by L. 1895, ch. 519, § 12.*)

§ 38. The board of rapid transit railroad commissioners, for and on behalf of the said city in which such road or roads may be constructed, may, from time to time, with the concurrence of six members of said board and the consent, in writing, of the bondsmen or sureties of the person, firm or corporation which has contracted to construct, equip, maintain and operate said road or roads, or any of them, agree with said contracting person, firm or corporation upon changes in and modifications of said contract, or of the plans and specifications upon which said road or roads is or are to be constructed, but no change or modifications in the plans and specifications consented to and authorized pursuant to section five of this act shall be made without the further consent and authorization provided for in said section; but in no event shall the annual rental to be paid to said city, for the use of said road, be reduced below the minimum rate hereinbefore provided. (*New section, Laws 1894, ch. 752, § 9, as am'd by L. 1895, ch. 519, § 13.*)

§ 38 (a.)* The Board of Directors of any company incorporated for the purpose of constructing, maintaining or operating a bridge or bridges connecting a city of more than one million inhabitants with any other city in this State, and by the act of incorporation of which authority shall have been

* This section was added to the Rapid Transit Act of 1891 by chapter 102 of the Laws of 1892. Another section numbered 38 was subsequently inserted in the Act by Laws 1894, chapter 752, and hence there were, up to the date of the amendment of 1895 (Laws of 1895, chapter 519), two sections of the amended Act similarly numbered.

conferred or intended to be conferred, to construct, maintain or operate, as a part of or in connection with its bridge, an approach or approaches thereto extending generally in an easterly and westerly direction, may determine in lieu of constructing such approach or approaches, to build, maintain and operate an elevated railway, the route of which shall be coincident with the route of such approach or approaches as defined in said act, and shall adopt a general plan for the construction thereof, and which shall show the general mode of operation, and contain such details as to manner of construction as may be necessary to show the extent to which any street, avenue, or other public place is to be encroached upon and the property abutting thereon affected, a copy of which plan shall be transmitted to the common council of the city in which the same is to be located. Such proceedings shall thereupon be had by such common council as are provided by section five of this act, as though such plans had been transmitted by the rapid transit commissioners as contemplated in said section: Provided, that where in any such city the exclusive control of any street, route, highway or avenue, which is to be occupied by any railway or railways constructed under the provisions of this section is by law vested in any local authority other than the common council of such city, the approval of the aforesaid plans, and consent to the construction of a railway thereunder shall be given by such local authority in place of, and if required in addition to such approval and consent by such common council, and with like effect. Upon obtaining the approval and consent of the local authorities as in said section provided, the said board of directors shall take the necessary steps to obtain, if possible, the consent of the property owners along the line of the said route or routes, and all proceedings in respect of such consents or when such consents cannot be obtained shall be similar in all respects to the proceedings in said section provided. Any consent of the local authorities to construct or operate such railway shall be given only upon the condition that the rate of fare upon such elevated railway shall not exceed five cents for each passenger, and that payment of such fare shall entitle

each passenger to or from said elevated railroad to free transit across the bridge or bridges with which it is intended to connect the same. When the consents of the local authorities and the property owners, or in lieu thereof, the authorization of the supreme court upon the report of the commissioners shall have been obtained, and the said company shall have accepted such condition it shall have all the powers of corporations formed under this act, it shall be authorized to build, construct, maintain and operate such elevated railway or railways, but all provisions of this act, or of any act requiring the sale of the right, privilege and franchise of constructing, maintaining and operating such railway or railways, or requiring a corporation or corporations to be organized for the purpose of acquiring such right, privilege and franchise, and all other provisions of this act or of any act inconsistent with this section, are hereby declared inapplicable to such elevated railway and to such company. The entire route of any elevated railway constructed under the provisions of this section shall not exceed three miles in length, nor shall any part of said railway except at the termini thereof, be less than sixteen feet above any street, avenue or public place, or less than fourteen feet above any existing elevated railway which may be crossed, intervened or intersected thereby. The said railway may be located and constructed so as to cross any intersecting street, avenue, highway or place otherwise exempted, except that no public park shall be occupied or crossed thereby, the structure of such elevated railway shall be liable to taxation as provided by law for similar structures. (*Laws 1892, ch. 102, am'd as to its number by L. 1895, ch. 519, § 14.*)

§ 39. For the purpose of constructing or operating any road for the construction and operation of which a contract shall have been made by the board of rapid transit railroad commissioners, including necessary stations and station approaches, or for the purpose of operating or securing the operation of the same free of interference and right of interference and of action and right of action for damages or otherwise, whether by abutting owners or others, or to provide, lay or maintain conduits, pipes, ways or other means for the trans-

mission of electricity, steam, water, air or other source or means of power or of signals or messages necessary or convenient for or in the construction or operation of such road, or for the transportation of materials necessary for such construction or operation, or to provide a temporary or permanent way or course for any such conduit, pipe or other means or source of transportation, the said board for and in behalf of said city may acquire, as in this act provided, any real estate, and any rights, terms, and interest therein, and any and all rights, privileges, franchises and easements, whether of owners or abutting owners or others, including any rights of owners, abutting owners, or others to interfere with the construction or operation of such road or to recover damages therefor, which, in the opinion of the board, it shall be necessary to acquire or extinguish for the purpose of constructing and operating such road free of interference or right of interference. The word "property" hereinafter used shall be deemed to include any such real estate, and any rights, terms and interest therein, and any such rights, privileges, franchises and easements, whether of owners, abutting owners, or others. (*New section, Laws 1894, ch. 752, § 9, as am'd by L. 1895, ch. 519, § 15.*)

§ 40. It shall and may be lawful for said board, and for all persons acting under its authority, to enter in the daytime into and upon any and all lands and property which it shall deem necessary to be acquired, or to which there may be appurtenant rights, terms, franchises, easements or privileges which it shall deem necessary to be acquired or extinguished by said city, for the purpose of making the maps or surveys hereinafter mentioned, and also to enter in like manner and for the same purpose upon any property adjacent to and within five hundred feet of the property to be so surveyed: and the said board shall cause three similar maps or plans to be made of each parcel of property which it may deem necessary so to be acquired, or to which there may be appurtenant rights, terms, franchises, easements or privileges necessary so to be acquired or extinguished, designating each of said parcels by a number, and upon each map or plan so made or in a memorandum accompanying the same and to be deemed part thereof the said board shall cause

to be clearly indicated the particular estate or estates, rights, terms, privileges, franchises or easements to be acquired or extinguished for the purposes of this act, in relation to each and every piece or parcel of property described upon said map or plan. The said board shall have power to cause a triplicate set of maps or plans and memoranda as herein provided for to be made as often and at such times as said board shall determine, and each set of maps or plans and memoranda so made shall contain the particulars above enumerated within such district as said board shall in each case provide. The maps or plans and memoranda herein provided for, when approved and adopted by said board, shall have written thereon a certificate of such approval, signed by the members of said board adopting and approving the same, and one copy thereof shall be filed in the department of public works, or other chief executive department having principal charge of the streets, there to remain as a public record, and the other two of said maps or plans and memoranda shall be transmitted to the counsel to the corporation or other principal legal adviser of said city. The said board may from time to time make and file further maps or plans and memoranda amending those already filed, but not so as to defeat or impair any property or interest which shall have been already acquired, or to revive any interest or right which may have been already extinguished by the said city. (*New section, Laws 1894, ch. 752, § 9, as am'd by L. 1895, ch. 519, § 16.*)

§ 41. Whenever and as often as the said board shall deem it to be necessary and proper that the said city should acquire any such property and shall have caused to be made, as provided in the last preceding sections, the maps or plans and memoranda specifying and defining the said property to be acquired, or to which are appurtenant the rights, terms, franchises, easements or privileges to be acquired or extinguished, and shall have certified, and filed and transmitted the several copies of such maps or plans as in the last section prescribed, the said board may direct the counsel to the corporation or other principal legal adviser of said city, to take legal proceedings to acquire the same for the said city, and the said

counsel to the corporation, or other principal legal adviser, shall thereupon take proceedings as in this act provided. (*New section, Laws 1894, ch. 752, § 9, as am'd by L. 1895, ch. 519, § 17.*)

§ 42. The said counsel to the corporation, or other principal legal adviser of said city, shall cause one of the maps or plans, so as aforesaid transmitted to him, to be filed in the office of the register of the county, or if there be no such register, then in the office of the county clerk of the county in which said city is situated. The map hereinafter denominated the third map, being the other one of the two so as aforesaid transmitted to said counsel to the corporation, or other legal adviser, shall be disposed of as hereinafter provided. (*New section, Laws 1894, ch. 752, § 9.*)

§ 43. After the said set shall have been filed as hereinbefore provided in the office of the register or county clerk of said county, the said counsel to the corporation, or other principal legal adviser, for and on behalf of the said city, shall, and he may from time to time, upon first giving the notice required by the next section of this act, apply to the supreme court at any special or general term thereof, to be held in the judicial district in which said city is situated, for the appointment of commissioners of appraisal. Upon each such application he shall present to the court a petition, signed by a majority of the members of said board and verified in the manner prescribed by law for the verification of pleadings, according to the practice of said court, setting forth the action or determination theretofore taken or had by said board, with respect to the property to be acquired, and the filing of said maps or plans and memoranda and praying for the appointment of such commissioners of appraisal. Such petition shall contain a general description of all the property to, or in or over or appurtenant to which any title, interest, right, franchise, easement, term or privilege is sought to be acquired or extinguished, and of every right, franchise, easement, or privilege sought to be acquired, by the said city for public purposes, each lot or parcel being more particularly described by a

reference to the number of said lot or parcel as given on said maps, and the title, interest, right, easement, term or privilege sought to be acquired, or extinguished, to or in or over or appurtenant to each of said lots or parcels shall be stated in said petition. (*New section, Laws 1894, ch. 752, § 9, as am'd by L. 1895, ch. 519, § 18.*)

§ 44. The said counsel to the corporation, or other principal legal adviser shall give, or cause to be given, notice by publication in two public newspapers published in the said city, of his intention to make application to the said court for the appointment of such commissioners of appraisal, which notice shall state the time and place of such application, shall briefly state the object of the application and shall describe the property sought to be acquired or affected. A statement of the location and boundaries of the several lots or parcels of property and rights, franchises, easements, or privileges sought to be taken or affected, and a brief statement as to each of said lots or parcels of the title, interest, rights, easements, terms or privileges therein or appurtenant thereto, sought to be acquired or extinguished with a reference to the dates and places of filing the said maps or plans and memoranda shall be a sufficient description of the property sought to be so taken or affected. Such notice shall be so published daily, Sundays and holidays excepted, in said newspapers for six weeks immediately previous to the time fixed in said notice for the presentation of each petition. (*New section, Laws 1894, ch. 752, § 9, as am'd by L. 1895, ch. 519, § 19.*)

§ 45. At the time and place mentioned in said notice, unless the said court shall adjourn said application to a subsequent date, and in that event at the time to which the same may be adjourned, the court, upon due proof to its satisfaction of the publication aforesaid, and upon filing the said petition, shall make an order for the appointment of three disinterested freeholders, residents in said city, as commissioners of appraisal, to ascertain and appraise the compensation to be made to the owners of property so to be taken or extinguished for the purposes indicated in this act. Such order shall fix the time and place for the first meeting of the commissioners. (*New section, Laws 1894, ch. 752, § 9.*)

§ 46. The said commissioners shall take and subscribe the oath required by the twelfth article of the constitution of the state of New York, and shall forthwith file the same in the office of the clerk of the county in which said city is situated. (*New section, Laws 1894, ch. 752, § 9.*)

§ 47. On filing said oath in the manner provided in the last section, the said city shall be and become seized and possessed in fee or absolute ownership of all those parcels of property, rights, terms, franchises, easements and privileges which are in the maps or plans and memoranda referred to in section forty of this act, described as parcels of property, rights, franchises, easements, or privileges which are to be acquired, and also shall become seized and possessed of all the rights, terms, franchises, easements or privileges appurtenant to any lots or parcels of property indicated on said maps or plans as parcels in regard to which it is deemed necessary to acquire such rights, terms, franchises, easements or privileges, or the said rights, terms, franchises, easements or privileges shall be extinguished as the case may be; and the said board for the said city, may immediately or at any time or times thereafter take possession or enter into the enjoyment of the said property, rights, terms, franchises, easements and privileges or of any part or parts thereof without any suit or proceeding at law for that purpose and the said board for the said city, or any person or persons acting under their or its authority, may enter upon and use, occupy, and enjoy in perpetuity all the parcels of property and all the rights, terms, franchises, easements or privileges appurtenant to any of the parcels of property and all rights, franchises, easements, and privileges, described on said maps or plans or in said memoranda, for any of the purposes authorized and provided for by this act. But on such filing of the said oath the said city shall be and become forthwith liable to the respective owners of the several parcels of property and the several rights, terms, franchises, easements and privileges appertaining thereto, and of the said rights, franchises, easements, and privileges acquired as aforesaid, for the true and respective values thereof, together with interest thereon from the time of filing the said oath, pro-

vided, however, that no such interest shall be payable to any owner of any such property, right, term, franchise, easement or privilege during any period during which the said city or the said board of rapid transit railroad commissioners may by any resistance, whether by legal proceedings or otherwise of such owner or with his authority, be prevented from taking possession thereof or enjoying the same ; and provided further, that no action shall be brought to recover the amount of such value or interest unless within eighteen months after the filing of such oath, a report shall not have been duly made by commissioners of appraisal as herein provided, or such report shall not have been confirmed by the Supreme Court as herein provided, so that the said city shall be liable to forthwith pay the amount by such report ascertained to be due for such value or interest. (*New section, Laws 1894, ch. 752, § 9, as am'd by L. 1895, ch. 519, § 20.*)

§ 48. Any one of said commissioners of appraisal may issue subpœnas and administer oaths to witnesses, and they or any one of them, in the absence of the others, may adjourn the proceedings, from time to time in their discretion, but they shall continue to meet from time to time as may be necessary to hear, consider and determine upon all claims which may be presented to them under any of the provisions of this act. In case of the death, resignation, refusal or neglect to serve of any commissioner of appraisal, the remaining commissioner or commissioners shall, upon ten days' notice, to be given by advertisement in the newspapers mentioned in section forty-four of this act, apply to the supreme court, at a special or general term thereof, to be held in the judicial district in which said city is situated, for the appointment of a commissioner or commissioners to fill the vacancy or vacancies so occasioned. In case of the death, resignation or refusal to serve of all the commissioners of appraisal, the said counsel to the corporation or other principal legal adviser to said city shall, on giving the notice required in this section, apply to the said court for the appointment of other commissioners of appraisal. It shall be the duty of the commissioners of appraisal to procure from the counsel to the corporation or other principal legal adviser the third set

of maps or plans and memoranda provided for in sections forty and forty-two of this act. They shall view the property laid down on said map, and shall hear the proofs and allegations of any owner, lessee or other person in any way entitled to or interested in the property to be acquired or extinguished, or any part or parcel thereof, and also such proofs and allegations as may be offered on behalf of the said city. They shall reduce the testimony, if any, taken before them to writing, and after the testimony is closed, they, or a majority of them, all having considered the same, and having an opportunity to be present, shall, without unnecessary delay, ascertain and determine the compensation which ought justly to be made by the said city to the owners or persons interested in the property acquired or extinguished by said proceedings. The said commissioners of appraisal shall make reports of their proceedings to the supreme court, as in the next section provided with the minutes of the testimony taken before them, if any, and they shall be entitled to the payment hereinafter provided for their services and expenses, to be paid from the fund hereinafter specified. The said commissioners may make a single report or may make reports from time to time as they shall reach their several decisions as to different parcels of property. (*New section, Laws 1894, ch. 752, § 9, as am'd by L. 1895, ch. 519, § 21.*)

§ 49. The said commissioners shall prepare a report or reports, to which shall be annexed the third set of map or plans and memoranda referred to in section forty-two of this act and therein denominated the third set or a copy thereof certified by them. Each said report shall contain a brief description of the property so taken or affected, with a reference to the map upon which the same is required to be indicated; a statement of the sums estimated and determined upon by them, as a just compensation for the same to be made by the city to the owners or persons interested therein and the names of such owners and persons; but in all and each and every case or cases where one or more of the owners and persons interested, or their respective estates or interests, are unknown, or not fully known, to the

commissioners of appraisal, it shall be sufficient for them to set forth and state in general terms the respective sums to be allowed and paid to the owners of and persons interested therein, generally, without specifying the names or estates or interests of such owner or persons interested, or any or either of them. (*New section, Laws 1894, ch. 752, § 9, as am'd by L. 1895, ch. 519, § 22.*)

§ 50. Each said report, signed by said commissioners, or a majority of them, shall be filed in the office of the clerk of the county in which said city is situated, and the commissioners of appraisal shall, in each case, notify the counsel to the corporation, or other principal adviser to said city, as soon as any such report is filed. (*New section, Laws 1894, ch. 752, § 9, as am'd by L. 1895, ch. 519, § 23.*)

§ 51. The counsel to the corporation, or other principal legal adviser, or, in case of his neglect to do so within ten days after receiving notice of such filing, then any person interested in the proceedings, shall give notice that the said report will be presented for confirmation to the supreme court, at a special term thereof, to be held in the judicial district in which said city is situated, at a time and place to be specified in said notice. The said notice shall contain a statement of the time and place of the filing of the report, and shall be published in two daily newspapers published in such city, for at least two weeks immediately prior to the presentation of said report for confirmation. (*New section, Laws 1894, ch. 752, § 9, as am'd by L. 1895, ch. 519, § 24.*)

§ 52. The application for the confirmation of each such report shall be made to the supreme court at a special term thereof, held in the judicial district in which said city is situated. Upon the hearing of the application for the confirmation thereof, the said court shall confirm such report and make an order containing a recital of the substance of the proceedings in the matter of the appraisal, with a general description of the property appraised and for which compensation is to be made, and shall also direct to whom the money is to be paid, and whether or not any part thereof, and, if so, what part, is to be deposited with the comptroller or other chief financial officer of said city with the cham-

berlain of said city, or if there be no chamberlain, with a bank or trust company to be designated by said court. Such report when so confirmed shall, except in the case of an appeal, as hereinafter provided, be final and conclusive, as well upon the said city as upon owners and all persons interested in or entitled to said property, and also upon all other persons whomsoever. (*New section, Laws 1894, ch. 752, § 9, as am'd by L. 1895, ch. 519, § 25.*)

§ 53. The said city shall, within four calendar months after the confirmation of any report of the commissioners of appraisal, pay to the respective owners and bodies politic or corporate mentioned or referred to in said report, in whose favor any sum or sums of money shall be estimated and reported by said commissioners, the respective sum or sums so estimated and reported in their favor respectively, with legal interest thereon from the date of filing the oath of said commissioners, and in case of neglect or default in the payment of the same within the time aforesaid, the respective person or persons or bodies politic or corporate, in whose favor the same shall be so reported, his, her or their executors, administrators, successors or assigns at any time or times after application first made by him, her or them to the comptroller or other chief financial officer of said city for payment thereof, may sue for and recover the same, with lawful interest as aforesaid, and the costs of suit, in any proper form of action against the said city in any court having cognizance thereof, and in which it shall be sufficient to declare generally for so much money due to the plaintiff or plaintiffs therein by virtue of this act for property taken or extinguished for the purposes herein mentioned, and the report of said commissioners, with proof of the right and title of the plaintiff or plaintiffs to the sum or sums demanded shall be conclusive evidence in such suit or action. (*New section, Laws 1894, ch. 752, § 9, as am'd by L. 1895, ch. 519, § 26.*)

§ 54. Whenever the owner or owners, person or persons interested in any property taken or affected in such proceeding, or in whose favor any such sum or sums or compensation shall be so reported, shall be under the age of twenty-one years, or

of unsound mind or absent from the city, and also in all cases where the name or names of the owner or owners, person or persons, interested in any such property shall not be set forth or mentioned in said report, or where the said owner or owners, person or persons, being named therein, can not, upon diligent inquiry, be found, or where there are adverse or conflicting claims to the money awarded as compensation, it shall be lawful for the said city to pay the sum or sums mentioned in said report, payable, or that would be coming to such owner or owners, person or persons, respectively, with interest, as aforesaid, to the chamberlain of said city, or, if there be no chamberlain, then to any bank or trust company designated by the court in the order confirming the report of the commissioners of appraisal, to the credit of such owner or owners, person or persons, and such payment shall be as valid and effectual in all respects as if made to the said owner or owners, person or persons, interested therein, respectively, according to their just rights; and, provided, also, that in all and each and every such case and cases where any sum or sums or compensation reported by the commissioners in favor of any person or persons, or parties whatsoever, whether named or not named in said report, shall be paid to any person or persons, or party or parties, whomsoever, when the same shall of right belong and ought to have been paid to some other person or persons, or party or parties, it shall be lawful for the person or persons, or party or parties, to whom the same ought to have been paid, to sue for and recover the same, with lawful interest and costs of suit, as so much money had and received to his, her or their use by the person or persons, party or parties, respectively, to whom the same shall have been so paid. (*New Section, Laws 1894, ch. 752, § 9.*)

§ 55. Every owner or person in any way interested in any property taken or extinguished as contemplated in this act, if he intends to make claim for compensation for such taking or extinguishment, shall within three years after the appointment of the commissioners of appraisal exhibit to the said commissioners a statement of his claim, and shall thereupon be entitled to offer testimony and to be heard before them touching such

claim and the compensation proper to be made him, and to have a determination made by such commissioners of appraisal as to the amount of such compensation. Every person neglecting or refusing to present such claim within said time shall be deemed to have surrendered his claim for such compensation, except so far as he may be entitled, as such owner or person interested, to the whole or a part of the sum of money awarded by the commissioners of appraisal as a just compensation for taking or extinguishing the property owned by said person, or in which the said person is interested. (*New section, Laws 1894, ch. 752, § 9.*)

§ 56. Payment of the compensation awarded by said commissioners of appraisal to the persons named in their report (if not infants or persons of unsound mind), shall, in the absence of notice to the said city or other claimants to such award, protect the said city. (*New section, Laws 1894, ch. 752, § 9.*)

§ 57. Said commissioners of appraisal may in their discretion take up any specified claim or claims, and finally ascertain and determine the compensation to be made thereon, and make a separate report with reference thereto, annexing to said report a copy of so much of the set of maps or plans and memoranda referred to in section forty-two of this act as indicates the property so reported on. Such report shall, as to claims therein specified, be the report required in this act, and the subsequent action with reference thereto, shall be had in the same manner as though no other claim were embraced in said proceeding, which, however, shall continue as to all claims upon which no such determination and report is made. (*New section, Laws 1894, ch. 752, § 9, as am'd by L. 1895, ch. 519, § 27.*)

§ 58. Within twenty days after notice of the confirmation of the report of the commissioners, as provided for in section fifty-two of this act, which notice may, as to parties who have not appeared before the commissioners, be given in the manner provided in section fifty-one of this act, either party may appeal to the general term of the supreme court in the department in which such commissioners were appointed, from the appraisal and report of the commissioners and the order con-

firming the same. Such appeal shall be heard upon due notice thereof being given, according to the rules and practice of said court. On the hearing of such appeal the court may direct a new appraisal and determination of any question passed upon, by the same or new commissioners, in its discretion, and from any determination of the general term either party, if aggrieved, may take an appeal, which shall be heard and determined by the court of appeals. In the case of a new appraisal the second report shall be final and conclusive on all the parties and persons interested. If the amount of compensation to be made by such city is increased by the second report, the difference shall be paid by the comptroller or other chief financial officer of said city, to the parties entitled to the same, or shall be deposited with the chamberlain, or bank or trust company, as the court may direct, and if the amount is diminished the difference shall be refunded to the said city by the party to whom the same may have been paid, and judgment therefor may be rendered by the court on the filing of the second report against the party liable to pay the same. But the taking of an appeal by any person or persons shall not operate to stay the proceedings under this act except as to the particular property with which the said appeal is concerned. Such appeal shall be heard upon the evidence taken before said commissioners, and any affidavits as to irregularities, and three printed copies of such evidence shall be furnished by the said city to the party taking the appeal, within ten days after the appeal is perfected, and such appeal may be heard on the evidence so furnished, and may be taken without security thereon. (*New section, Laws 1894, ch. 752, § 9.*)

§ 59. The supreme court in the judicial district in which said city is situated shall have power at any time to amend any defect or informality in any of the special proceedings authorized by this act as may be necessary, and to direct such further notices to be given to any party in interest as it deems proper, and also to appoint other commissioners in place of any who shall die, or refuse, or neglect to serve or be incapable of serving, or be removed. And the said court may at any time remove any commissioner of appraisal who in its judgment shall be in-

capable of serving, or who shall for any reason in its judgment be an unfit person to serve as such commissioner. The cause of such removal shall be specified in the order making the same. If in any particular it shall at any time be found necessary to amend any pleading or proceeding or to supply any defect therein arising in the course of any special proceeding authorized by this act, the same may be amended or supplied in such manner as shall be directed by the supreme court, which is hereby authorized to make such amendment or correction. Wherever in this act reference is made to the General Term of the Supreme Court, it shall be deemed to include the Appellate Division of the Supreme Court for the district in which said city is situated, whenever said General Term shall be superseded thereby. (*New section, Laws 1894, ch. 752, § 9, as am'd by L. 1895, ch. 519, § 28.*)

§ 60. All property acquired under the provisions of this act shall be and shall be deemed to have been acquired for public uses and purposes, and for the purpose of affording increased facilities for rapid transit between points within the city acquiring such property. (*New section, Laws 1894, ch. 752, § 9.*)

§ 61. The moneys necessary and sufficient to be paid for any property, acquired in any manner under the provisions of this act, together with all expenses necessarily incurred in surveying, locating, and acquiring title to such property, and for surveying and locating the same, and for preparing the necessary maps and plans in connection therewith, shall be raised and paid out of the proceeds of bonds issued and sold as provided by section thirty-seven of this act, and all such expenses so incurred in surveying, locating and acquiring title, and for preparing necessary maps and plans and also those incurred as provided in the next section shall be deemed a part of and included in the cost of constructing the road or roads, the construction of which rendered it necessary to acquire the property in the course of the acquisition of which such expenses may be incurred. (*New section, Laws 1894, ch. 752, § 9, as am'd by L. 1895, ch. 519, § 29.*)

§ 62. The commissioners of appraisal appointed in pursuance of this act shall receive as compensation the sum of ten

dollars per day for each day actually employed. They may employ the necessary clerks, stenographers and surveyors. The counsel to the corporation or other principal legal adviser to said city shall, either in person or by such counsel as he shall designate for the purpose, appear for and protect the interests of the city in all such proceedings in court and before the commissioners. The fees of the commissioners and the salaries and compensation of their employes, and all other necessary expenses in and about the said proceedings provided for by this act, and such allowance for counsel fees as may be made by order of the court, and all reasonable expenses incurred by said counsel to the corporation, or other principal legal adviser of said counsel designated by him for the proper presentation and defense of the interests of said city before said commissioners and in court, shall be paid by the comptroller or other chief financial officer of said city out of the funds referred to in the last preceding section. But such fees and expenses shall not be paid until they have been taxed before a justice of the supreme court in the judicial district in which said city is situated upon five days' notice to the counsel to the corporation, or other chief legal adviser of said city. Such allowance shall, in no case, exceed the limits prescribed by section thirty-two hundred and fifty-three of the code of civil procedure. (*New section, Laws 1894, ch. 752, § 9.*)

§ 63. In case it shall be determined by vote of the people as provided by sections twelve and thirteen of chapter seven hundred and fifty-two of the laws of eighteen hundred and ninety-four to construct by and at the city's expense, then and in that event the road or roads so constructed shall be and remain the absolute property of the city so constructing it or them, and shall be and be deemed to be a part of the public streets and highways of said city, to be used and enjoyed by the public upon the payment of such fares and tolls, and subject to such reasonable rules and regulations as may be imposed and provided for by the board of rapid transit railroad commissioners in said city. (*New section, Laws 1894, ch. 752, § 9, as am'd by L. 1895, ch. 519, § 30.*)

§ 64. This act shall not be construed to repeal or in any man-

ner affect chapter six hundred and six of the laws of eighteen hundred and seventy-five, entitled "An act to further provide for the construction and operation of a steam railway or railways in the counties of this state," or the acts amendatory thereof or supplementary thereto, or article five of chapter five hundred and sixty-five of the laws of eighteen hundred and ninety, known as the railroad law, except so far as the said acts or either of them, would if this act had not been passed, authorize the appointment hereafter of any commissioners applied for as provided in section one of said act of eighteen hundred and seventy-five, or in section one hundred and twenty of said act of eighteen hundred and ninety, in any city or cities containing a population of over one million inhabitants, according to the last preceding national or state census or authorize any commissioners already appointed pursuant to the provisions of such act or acts in any such city or cities, to fix, determine or locate any new route or routes, pursuant to the provisions of either of said acts. This act shall not be construed in any manner to affect the exercise or enjoyment at any time, and from time to time hereafter, of any right or rights heretofore acquired, exercised or enjoyed by any corporation heretofore duly incorporated and organized or deriving powers and rights under the laws of this state. This act shall not affect or impair the exercise or enjoyment of any right or rights now possessed or heretofore acquired or heretofore authorized to be acquired, exercised or enjoyed by any street surface railroad corporation, except as herein otherwise expressly provided, and this act shall not be construed to repeal or in any manner affect chapter one hundred and forty of the laws of eighteen hundred and fifty, entitled "An act to authorize the formation of railroad corporations, and to regulate the same," or either of the several acts amendatory thereof or supplementary thereto. This act shall not be construed to repeal or in any manner affect chapter five hundred and sixty-five of the laws of eighteen hundred and ninety, known as the railroad law, except as hereinabove expressly provided, or except so far as the provisions of the same conflict with the provisions of this act. But nothing in this section contained shall prevent the board of rapid transit rail-

road commissioners from laying out a route for a railway and constructing a railway, and such board shall have the right to lay out such route and construct such railway, over, under, along or across any street in, along, under or over which there shall be any existing railway, provided that the route so laid out by the said board and the railway so constructed by it shall so pass over or under or at the side of such existing railway as not to interfere with its operation. (*Laws* 1891, *ch.* 4, § 34, *as am'd by* *L.* 1894, *ch.* 752, § 9, and *by* *L.* 1895, *ch.* 519, § 31.)

§ 65. No railroad shall be constructed or operated upon the surface of any street, avenue or highway in the city of New York under the provisions or authority of this act. (*Laws* 1891, *ch.* 4, § 35, *as am'd by* *L.* 1894, *ch.* 752, § 9.)

§ 66. All acts and parts of acts local or general inconsistent with this act are hereby repealed. (*Laws* 1891, *ch.* 4, § 36, *as am'd by* *L.* 1894, *ch.* 752, § 9.)

§ 67. This act shall take effect immediately. (*Laws* 1891, *ch.* 4, § 37; *as am'd by* *L.* 1894, *ch.* 752, § 9.)

NOTE.—The following sections of the Act of 1894 (Chapter 752), do not, *in terms*, amend any portion of the Rapid Transit Act of 1891, although the whole Act of 1894 is, in fact, an amendment of the earlier statute. These sections are accordingly numbered with respect to their position in the Act of 1894, and without reference to the numbering of the sections in the original act.

§ 11. The commissioners of rapid transit heretofore appointed under the act hereby amended, or who became such commissioners by its terms, upon the organization of the board which shall succeed them pursuant to said act as hereby amended, shall cease to be such commissioners and shall transfer and deliver to the board of rapid transit railroad commissioners, provided for by the act hereby amended, as so amended, all furniture, books, maps, records, plans and other papers and property of what kind soever appertaining or be-

longing to or in the custody of the board of which they were commissioners, or in their possession, or under their control as such commissioners, or held by them, or for which they are responsible in their official capacity. The expenses incurred by said commissioners for which an appropriation or appropriations shall have been made pursuant to section ten of the act hereby amended, shall be paid upon vouchers to be furnished by said commissioners and otherwise, as provided in said section. Said commissioners shall also be entitled to receive a reasonable compensation for the services which have been rendered by them, which may have been, or which shall be, determined on their application in the manner provided for in said section. The comptroller, or other chief financial officer of said city, is hereby authorized and directed to issue and sell revenue bonds of such city in anticipation of the receipt of taxes, and out of the proceeds of such bonds to pay said compensation so ascertained and determined, and the amount necessary to pay the principal and interest of said bonds shall be included in the tax levy of said city for the year next following the issue and sale of the same. (*New section, Laws 1894, ch. 752, § 11.*)

§ 12. The said board of rapid transit railway commissioners shall cause the question whether such railway or railways shall be constructed by the city and at the public expense, to be submitted to the vote of the qualified electors of the city within which such railway or railways is or are to be constructed, and to that end it shall be the duty of the said board, after completion of the detailed plans and specifications, as required by the act hereby amended, at least thirty days prior to the next general election, to file with the public officer or officers within the county in which such city is located, who may be charged with the duty of printing the ballots to be used at such election, a request that separate ballots be printed and supplied to such electors, one-half in number of which shall read: "For municipal construction of rapid transit road," and the other half in number of said ballots shall read: "Against municipal construction of rapid transit road." Upon such request being so filed, such ballots shall

be printed and supplied to such electors at such general election, and separate ballot boxes shall be provided for the reception of the same in each election district within such city, and the provisions of chapter six hundred and eighty of the laws of eighteen hundred and ninety-two, entitled "An act in relation to the elections constituting chapter six of the general laws," and any act or acts amendatory thereof or supplemental thereto shall apply thereto as far as the nature of the case may allow. No ballot which may be provided under this section shall be deemed invalid by reason of any error in dimensions, style of printing, or other formal defect, or through having been deposited in the wrong ballot box, but all of such ballots shall be canvassed and returned as if such formal defect had not existed, or as if they had been deposited in the box provided for the purpose. Upon the canvass of such votes by the board of county canvassers of the county in which such city is located, it shall be the duty of said board to file with the county clerk of said county a statement which shall declare the total number of votes cast in said city "for municipal construction of rapid transit road," and the total number so cast therein "against municipal construction of rapid transit road." And the said railway or railways shall be constructed by the said city and at the public expense, if it shall be found from such statements so filed that there is a majority of the votes so cast in favor of such municipal construction. (*New section, Laws 1894, ch. 752, § 12.*)

§ 13. In case the majority of votes cast at such election shall be in favor of such municipal construction of said railway or railways, it shall be the duty of said board of rapid transit railway commissioners within thirty days after the official declaration of the said vote to proceed to construct the said railway or railways, and to make and let all contracts required for the performance of the work necessary to be done and performed in and about the construction thereof. All such contracts must, before execution, be approved as to form by the counsel to the corporation, or other chief legal adviser for said city. (*New section, Laws 1894, ch. 752, § 13.*)

§ 14. This act shall take effect immediately; except that the building of said road, or the sale of the franchises as provided for in sections seven and thirty-four of the act hereby amended, as so amended, is postponed until, and made dependent upon, the determination of that question by the vote of the people as called for by sections twelve and thirteen of his act. (*New section, Laws 1894, ch. 752, § 14.*)

